IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO.119 OF 1987

M/s. Tata Iron & Steel Co. Ltd. ...Plaintiff.

Vs.

M/s. Hasmukh Engineering Works. ...Defendant.

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Mr. H. N. Jain i/b. Gordhandas & Fozdar for the Plaintiff.
None for the Defendant.

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CORAM :DR.D.Y.CHANDRACHUD, J.
November 19, 2007.

P.C.:

The suit in the present case is founded on an action for passing off. In addition, there is a claim for damages which has not been pressed at the hearing of the suit. The Plaintiff is engaged in the manufacture and sale of various types of bearings, amongst other products which are sold under a distinctive mark, to wit “TATA”. The Plaintiff sold bearings in the market commencing from 1st October 1983 with a distinctive mark as aforesaid. The approximate sales of the bearings manufactured by the Plaintiff between April 1985 and March 1986 was stated to have been to the extent of Rs. 12.25 crores. The Plaintiff claims that by virtue of the quality of its product,

the aforesaid trade mark and the associated get up of its carton have acquired in all markets in the country, a goodwill and reputation. The advertisements published by the Plaintiff for the period between March 1985 and March 1986 are stated to have been to the extent of Rs.30 lakhs. The contention of the Plaintiff is that the Defendant had immediately prior to the institution of the suit commenced the sale of bearings, using the same mark as that of the Plaintiff. The product of the Defendant is stated to have been sold in cartons identical to those of the Plaintiff. According to the Plaintiff, the conduct of the Defendant was a mala fide and dishonest effort to pass off the goods of the Defendant for the goods manufactured and sold by the Plaintiff. An order of injunction has accordingly been sought. Relief in terms of damages is also sought which as stated earlier, has not been pressed at the hearing of the suit.

An interim injunction came to be granted in the suit on 16th January 1987 which was subsequently confirmed on 5th March 1987. No Written Statement was filed. By an order dated 7th March 2006, a Learned Single Judge of this Court permitted the Defendant to file a Written Statement subject to the payment of costs quantified at

Rs.5,000/- to be deposited with the Maharashtra Legal Services Authority. On 9th March 2007, the Court has been informed that the Defendant has not deposited the costs as directed and the Written Statement was, as such, not taken on record. Subsequently, the suit appeared on Board on 12th April 2007, 19th April 2007, 26th April 2007 and 16th June 2007 when the Defendant remained absent. The order of the Court has not been complied with. There is no defence to the suit.

In these circumstances, a case is made out for the passing of a decree under Order 8 Rule 10 of the Code of Civil Procedure, 1908. The suit is accordingly decreed in terms of prayer clauses (a), (b) and (c). Prayer clauses (d), (e), (f) and (g) are not pressed.

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